

BILL ANALYSIS

H.B. 1841
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Ways & Means
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A company with a "nexus," or physical presence, in Texas that makes sales in Texas is required to collect sales tax from its customers and remit that tax to the state. A Supreme Court ruling in the early 1990s affirmed a previous ruling that prohibited states from compelling out-of-state companies to collect sales tax in violation of the United States Constitution's commerce clause. A "substantial nexus," such as owning a building or employing sales staff in a state, is required before states can impose tax collection duties on out-of-state companies.

In the late 1990s, an Internet tax policy working group convened by the comptroller of public accounts made certain recommendations to the state regarding the maintenance of a fair and competitive environment for electronic commerce. The group advised that the use of an Internet site, if hosted from a server located in Texas, should not constitute nexus. Despite that conclusion, interested parties contend that the state's commitment to this nexus standard has been questioned, raising the concern that out-of-state companies will abandon Texas-based Internet hosting businesses out of fear that they will be required to collect or pay the state sales tax. Texas-based hosting companies currently pay substantial state sales tax on purchases of hardware, software, and electricity, but may be forced to scale back those purchases if customers choose to avoid Texas-based hosting sites.

H.B. 1841 seeks to affirm the state's commitment to the nexus standard by clarifying the taxability of Internet hosting.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1841 amends the Tax Code to establish that, for purposes of provisions relating to the imposition and collection of use tax, a person whose only activity in Texas is conducted as a user of Internet hosting is not engaged in business in Texas. The bill establishes that a person providing Internet hosting is not required to examine a user's data to determine the applicability of statutory provisions relating to use tax to a user; to advise a user as to the applicability of such provisions; or to report to the comptroller of public accounts about a user's activities. The bill defines "Internet hosting" as providing to an unrelated user access over the Internet to computer services using property that is owned or leased and managed by the provider and on which the user may store or process the user's own data or use software that is owned, licensed, or leased by the user or provider. The bill specifies that the term does not include telecommunications services.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.